

Message Text

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TAGS: TSPA JA US

SUBJ: SPACE COOPERATION - NEGOTIATION OF LAUNCH ASSISTANCE

CONTRACTS AND MOU

1. VISIT OF NASA CONTRACT NEGOTIATORS HEADED BY MR. JOHN BIGGS HAS MADE IMPORTANT CONTRIBUTION TO REGAINING MOMENTUM ON NEGOTIATION OF ARRANGEMENTS REQUIRED FOR LAUNCHING BY US OF GOJ APPLICATION SATELLITES. IN ADDITION TO SPECIFIC NEGOTIATIONS ON LAUNCH SERVICES CONTRACT WITH NASDA REPRESENTATIVES, NASA TEAM, ACCOMPANIED BY SCICOUNS, HELD USEFUL REVIEW OF STATUS OF NEGOTIATION OF MOU AND ANNEX, AS WELL AS EXCHANGE OF GOVERNMENTAL NOTES. EMBASSY WISHES TO COMMEND MR. BIGGS AND HIS ASSOCIATES FOR THEIR SKILLFUL AND EFFECTIVE PRESENTATION OF US POSITIONS.

2. EMBASSY UNDERSTANDS THAT TEAM'S CONTRACT DISCUSSIONS WITH NASDA HAVE LED TO DEVELOPMENT OF FORMULATION BY TEAM WHICH WE BELIEVE CAN BRIDGE LONG-STANDING GAP BETWEEN USG REQUIREMENTS FOR FULL REIMBURSEMENT AND GOJ LEGAL INABILITY TO UNDERTAKE OPEN- ENDED FINANCIAL OBLIGATIONS. EMBASSY HOPES THAT THIS APPROACH WILL BE ACCEPTABLE TO NASA.

3. PROPOSED NEW NASA POLICY OF REQUIRING INDEMNIFICATION FROM CUSTOMER FOR ALL THIRD-PARTY LIABILITY, EVEN WHEN INVOLVING NO-FAULT ON PART OF CUSTOMER, WAS SUBJECT OF EXTENSIVE DISCUSSION
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WITH BOTH NASDA AND STA. NASDA BELIEVES THAT RISK ON THIRD-PARTY

LIABILITY IS INSURABLE AND APPEARS WILLING TO ACCEPT NEW POLICY ON THIS BASIS. STA, ON THE OTHER HAND, TOOK EXCEPTION TO POLICY, ESPECIALLY ITS EXTENSION TO LIABILITY ARISING OUT OF DELIBERATE ACTS OR WILFUL NEGLIGENCE ON THE PART OF NASA EMPLOYEES. NASA TEAM BELIEVES, ON BASIS OF OVERALL DISCUSSIONS, THAT STA WILL BE PREPARED TO ALLOW NASDA TO ACCEPT THIRD-PARTY LIABILITY PROVISIONS IN NASA/NASDA CONTRACT, AND THAT THIRD-PARTY LIABILITY PROVISION WHICH EXCLUDES INTENTIONAL DAMAGE ON PART OF NASA WOULD BE ACCEPTABLE TO NASDA IN THE TOTAL CONTEXT OF A SATISFACTORY CONTRACT AND MOU WHICH OVERCOMES OTHER PENDING ISSUES SUCH AS THAT OF FINANCING. EMBASSY IS SOMEWHAT LESS OPTIMISTIC THAT ASSUMPTION OF ADDITIONAL THIRD-PARTY LIABILITY RISK WILL BE ACCEPTABLE TO GOJ AS A WHOLE. WE AGREE THAT, AT A MINIMUM, LIABILITY ARISING OUT OF INTENTIONAL ACTS OR WILFUL NEGLIGENCE SHOULD BE EXCEPTED FROM NEW FORMULA.

4. IN MEETING WITH STA, STA REPS STRESSED THAT TIMING OF NEGOTIATION PROCESS WAS DEPENDENT UPON EXCHANGE OF GOVERNMENTAL NOTES WHICH CONSTITUTES FIRST STEP. DURING MEETING, MESSAGE FROM JAPANESE EMBASSY WASHINGTON ARRIVED INDICATING THAT FAVORABLE RESOLUTION OF TWO OUTSTANDING ISSUES IN US DRAFT OF NOTE SEEMED PROBABLE, BUT MESSAGE APPARENTLY INDICATED THAT DEFINITIVE REPLY ON THESE ISSUES HAD NOT YET BEEN RECEIVED FROM USG.

5. EMBASSY COMMENT: AS EMBASSY HAS POINTED OUT IN SEVERAL PREVIOUS MESSAGES, SUCCESSFUL CONCLUSION OF LAUNCH SERVICE ARRANGEMENTS WITH GOJ IS BY FAR MOST EFFECTIVE DETERRENT TO GROWING JAPANESE RESOLVE TO DEVELOP INDEPENDENT LAUNCH CAPABILITY FOR LARGE APPLICATIONS SATELLITES. SUBSTANTIAL DEFERRAL IN PREVIOUS SCHEDULE FOR JAPANESE LAUNCHINGS (AN ADMISSION OF FAILURE WHICH DOES NOT COME EASILY IN JAPAN) WAS, PREDICTABLY, PARTLY ATTRIBUTED TO STRINGENCY OF US TERMS FOR PROVIDING LAUNCHING SERVICES, AND GENERATED FURTHER EXPRESSIONS OF NEED FOR INDEPENDENT SPACE DEVELOPMENT BY JAPAN. NEWLY ESTABLISHED LAUNCH DATE FOR GMS IS NOW MAY 1977, THUS REQUIRING, IN VIEW OF US ADVANCE PAYMENT REQUIREMENTS, COMPLETION OF NEGOTIATION AND EXECUTION OF ALL AGREEMENT DOCUMENTS (EXCHANGE OF NOTES, MOU, AND CONTRACT) BY MAY OF THIS YEAR, A DIFFICULT TARGET AT BEST. IT IS THE EMBASSY'S LIMITED OFFICIAL USE

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CONSIDERED JUDGMENT THAT A FURTHER SLIPPAGE IN LAUNCH SCHEDULE OCCASIONED BY INABILITY TO COMPLETE THESE NEGOTIATIONS ON TIMELY BASIS WILL HAVE A SERIOUS IMPACT ON COOPERATIVE RELATIONSHIP IN THE SPACE FIELD.

6. WHILE WE ARE SOMEWHAT ENCOURAGED BY POSITIVE RESULTS OF NASA TEAM'S VISIT, IT IS OBVIOUS THAT MUCH REMAINS TO BE DONE IF SCHEDULE IS TO BE MET. WE URGE THAT DEFINITIVE RESPONSE BE GIVEN

GOJ SOONEST ON REMAINING ISSUES IN GOVERNMENTAL NOTES, IF THIS HAS NOT ALREADY BEEN DONE. WE ARE ALSO CONCERNED THAT PROPOSED NEW POLICY CALLING FOR ASSUMPTION OF FULL THIRD-PARTY LIABILITY BY CUSTOMER MAY PRESENT MORE DIFFICULT OBSTACLE TO CONCLUSION OF LAUNCH SERVICE ARRANGEMENTS THAN APPEARS TO BE THE CASE ON BASIS OF RECENTLY CONCLUDED DISCUSSIONS. IN VIEW OF OBVIOUS US INTEREST IN DISCOURAGING THE DEVELOPMENT OF INDEPENDENT LAUNCH CAPABILITIES IN OTHER NATIONS, WE SERIOUSLY QUESTION WHETHER US INTERESTS ARE SERVED BY ADOPTION OF POLICY WHICH REQUIRES LAUNCH SERVICES CUSTOMERS TO ASSUME RISK OF DAMAGES WHICH MIGHT BE CAUSED BY AN INDEPENDENT CONTRACTOR, I.E., NASA, OVER WHOM THEY EXERCISE NO CONTROL. HOWEVER, SINCE THIS POLICY HAS NOW BEEN PRESENTED TO GOJ, WE AGREE THAT BEST COURSE IS TO AWAIT THEIR RESPONSE.
HODGSON

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